

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08cv260-3-R
(3:04cr105)**

VICTOR A. RITA,)	
)	
Petitioner,)	
v.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.))	
<hr/>		

THIS MATTER comes before the Court upon the Petitioner's "Motion to Treat Motion to Vacate as Conceded" filed August 11, 2008 [Doc. No. 4].

Petitioner asks this Court to treat his Motion to Vacate as conceded by the United States due to the fact that the Government was ordered to file a response to his Motion to Vacate, but failed to do so.

Petitioner filed a Motion to Vacate on June 5, 2008 [Doc. No. 1]. On June 18, 2008, this Court entered an Order directing the Government to respond to Petitioner's Motion within forty days [Doc. No. 3]. It has been brought to the Court's attention that due to a clerical error in the clerks' office, the Government was not served with a copy of the Court's Order. The Court

also notes that although the docket reflects that on June 19, 2008 a regeneration of the Notice of Electronic Filing was issued to include the United States Attorney's Office, such notice was not served on the Government.

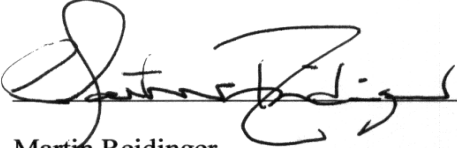
Given that the Government was never served with the Court's Order to file a response to Petitioner's Motion to Vacate, Petitioner's "Motion to Treat Motion to Vacate as Conceded" is denied.

IT IS, THEREFORE, ORDERED that:

- 1) Petitioner's "Motion to Treat Motion to Vacate as Conceded" is DENIED; and
- 2) No later than forty (40) days from the filing of this Order, the United States Attorney shall file an answer to Petitioner's Motion to Vacate.

SO ORDERED.

Signed: September 12, 2008


Martin Reidinger
United States District Judge

